the original owner, probably retains a right of possession sufficient to maintain trover for a conversion even after he loses the article. See *Buckley* v. *Gross*, 32 L. J. Q. B. 129, 131; SALMOND, TORTS, 2 ed., 320, 321. But see CLERK & LINDSELL, TORTS, 270. Perhaps it would also be expedient to give an adverse possessor similar rights. But *cf.* *Buckley* v. *Gross*, 32 L. J. Q. B. 129, 131. The expiration of a fixed term of bailment, however, or an express notice of the termination of a bailment at will, even where the article has been lost, would seem to terminate the right of possession of the bailee. A right of adverse possession, being in its essence contrary to the intention of the owner from the start, could hardly be cut off by a mere expression of intention. But a rightful bailee who has lost possession of the bailed article could not after his term set up an adverse right without actual possession.

WILLS — CONSTRUCTION — ESTATES BY IMPLICATION. — A will directed the executrix to sell the testator's land and to purchase bonds with the proceeds, the interest from the bonds to be applied to the maintenance of the testator's children. *Held*, that legal title to the land vests in the executrix. *In re Hazelton*, 137 N. Y. Supp. 937 (Surr. Ct., Kings County).

Legal title to land may pass under a will by an implied devise where it is necessary that the executors should have a legal estate for the most efficient performance of the duties placed upon them by the will. See 1 WILLIAMS, EXECUTORS, 10 ed., 489. Thus where executors are directed to pay an annuity out of land, legal title to the land passes to them by implication. *Oates* v. *Cooke*, 3 Burr. 1684; *Anthony* v. *Rees*, 2 Cromp. & J. 75. The same is true where the executors are instructed to collect and pay over rents. *In re Fisher*, L. R. 13 Ir. 546; *Morse* v. *Morse*, 85 N. Y. 53. A devise in such a case is not implied, however, if it will offend some rule of law. *Post* v. *Hover*, 33 N. Y. 593. Where a will provides that the executors shall sell land, they take merely a power of sale, since a power is sufficient to enable them fully to perform that duty. *Doe* v. *Shotter*, 8 A. & E. 905. See 1 SUGDEN, POWERS, 7 ed., 129–131. There seems no reason why the result should be different when, as here, the executors are instructed to invest the proceeds of the sale. *Greenough* v. *Welles*, 10 Cush. (Mass.) 571; *Hope* v. *Johnson*, 2 Yerg. (Tenn.) 123.

WILLS — REVOCATION OF CODICIL BY TEARING — DISPOSITION OF REVOKED LEGACY. — In a codicil to a will in which the defendants were residuary legatees, the testatrix bequeathed a sum of money to a legatee not mentioned in the will. Later she destroyed the codicil with no intention of thereby revoking the will. *Held*, that the legacy contained in the destroyed codicil should not go to the heirs-at-law but should become part of the residuary estate. *Osburn* v. *Rochester Trust & Safe Deposit Co.*, 152 N. Y. App. Div. 235.

Although for many purposes a codicil may republish a will, it clearly does not so incorporate the will into itself that a destruction of the codicil destroys both the will and the codicil. See *Estate of McCauley*, 138 Cal. 432, 434, 71 Pac. 512, 513; *Appeal of Carl*, 106 Pa. St. 635, 641. And since a will and its codicils are construed in law as one instrument the destruction of a codicil would seem to present a situation similar to the cancelation of a single clause of a will in jurisdictions allowing partial revocation by physical act. But what disposition to make of a specific legacy after a non-testamentary revocation thereof is a mooted point. Some courts urge that to allow the legacy to become part of the residuum would in substance be effecting a different testamentary disposition without the formalities required by statute. *Miles's Appeal*, 68 Conn. 237, 36 Atl. 39. *Cf.* *Waln's Estate*, 156 Pa. St. 194, 27 Atl. 59; *Creswell* v. *Cheslyn*, 2 Eden 123. But the better reasoned cases reach the opposite result. *Bigelow* v. *Gillott*, 123 Mass. 102; *Collard* v. *Collard*, 67 Atl.

190 (N. J. Eq.). The testator's intent at the time of drafting the residuary clause was to bequeath by it not any particular property, but whatever property might for any reason be undisposed of at his death. The fact that the residuum will be increased by his own subsequent acts which are not for that exclusive purpose, can furnish no reason for refusing to give effect to his intent. *Stubbs* v. *Sargon*, 3 Myl. & C. 507. For such a principle would prevent the devising of all after-acquired property.

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# BOOK REVIEWS.

COMPARATIVE LEGAL PHILOSOPHY. Applied to Legal Institutions. By Luigi Miraglia. Translated by John Lisle. The Modern Legal Philosophy Series, Vol. III. Boston: Boston Book Co. 1912. pp. xl, 793.

This volume is intended as an historical introduction to the various schools of continental legal philosophy, but it is only fair to the author to state that he himself, in the last Italian edition, entitled it simply Philosophy of Law. For the book is not either a history of legal philosophy, nor a *systematic* survey of the diverse influential views that have been entertained on the chief topics of legal philosophy. It is simply a book on the philosophy of law, unusually full of references and summaries of the views of different writers; but it cannot be claimed that Miraglia displays a keen sense for the historical or the systematically important. There are, for instance, very few references to the main stream of European legal thought that begins in patristic literature and culminates in Suarez or Calvin (neither of whom are even mentioned); and in giving the modern views of corporations six pages are devoted to Giorgi but not a word is said about Gierke! The reader who wants to see for himself how typical these instances are, need only glance through the index and note the relative frequency with which different writers are quoted. As Italian thought, however, is not as well known in America as it ought to be, it is the reviewer's duty to point out that the same historical disproportion characterizes Miraglia's references to Italian writers. Thus Rosmini, who is quoted so frequently, has, in spite of the saintliness of his character and the prodigious bulk of his writings, hardly had any more influence on Italian thought than Gioberti who is barely mentioned, or even than Count Mamiani, the protagonist of the national Italian School of Philosophy, who is not mentioned at all.[1]

The volume before us consists of three distinct parts: the Introduction (pp. 1–86), Book I (pp. 87–318), and Book II (pp. 319–773). The number of pages in each section fairly represents the relative importance of the subject matter as treated by Miraglia.

The introduction attempts a summary of the history of philosophy; but it is the reviewer's unpleasant duty, as a teacher of philosophy, to state bluntly that Professor Miraglia's knowledge of the history of general philosophy is not worthy of serious respect. It is obviously acquired at second hand, and, — apart from the absence of the historical sense, which shows itself in giving Spedalieri as much space as Hobbes and Locke combined, — is full of positive misinformation (see, *e. g.*, his references to Duns Scotus, p. 11, Cabanas [Cabanis?], p. 37, or neo-criticism, pp. 85–86). The layman in philosophy will do well to omit this introduction altogether, and depend for his knowledge of the his-

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[1] One of Count Mamiani's books, on the Law of Nations, was translated into English by Lord Acton.